

**Prepared Statement of Bob Malone**

**Regional President for BP**

**The United States Senate Commerce, Science and Transportation Committee**

**Subcommittee on Consumer Affairs, Foreign Commerce and Tourism**

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My name is Bob Malone and I am Regional President for BP. BP is a global energy company, formed from the recent mergers of five great companies, BP, Amoco, ARCO, Vastar and Burma Castrol. We are proud of our heritage and the conduct of each company that came together to form BP. Today we stand in front of the Committee as a completely new company.

Energy policy has been in the news on a daily basis over the past few months and West Coast energy concerns have been given particular focus. At BP we are committed to working together with this committee and all stakeholders to better understand the forces at work in the energy marketplace. We must also remain vigilant on behalf of our employees, contractors, shareholders and customers to ensure that the record is accurate as to how we operate in the market.

Our intention is to once again provide answers to any remaining questions regarding the past, with an eye to solving the future energy challenges of our customers, your constituents. We are fundamentally committed as a company and members of the community to give our customers choice for heat, light and mobility; these are the products we sell. We believe our record is second to none in the United States with regard to cleaner fuels, climate change initiatives and openness to the community.

I thank the Committee for this opportunity to address the topic of West Coast gasoline prices. Let me turn directly to some of the issues that I was told would be the subject of today's hearing.

**West Coast Gasoline Prices**

West Coast gasoline marketing is extremely competitive, yet West Coast gasoline prices are among the highest in the nation. Numerous studies and findings have determined that the situation is caused by a variety of market conditions. Specifically, West Coast gasoline prices are higher because:

1. Logistically, the West Coast is not easily accessible as compared to other regions. The West Coast infrastructure is challenged in that there is limited pipeline connection to other regions, and the primary mode of product import is by tanker and barge. Additionally,

manufacturing is operating at full capacity resulting in significant risk to supply should an unexpected outage occur.

2. State gasoline taxes on the West Coast are among the highest in the nation.
3. West Coast fuel specifications are among the most stringent in the country. In particular, California Air Resources Board (CARB) gasoline is unique and more expensive to manufacture. California gasoline demand cannot easily be satisfied through imports from adjacent regions nor from other refineries within PADD V. Since CARB gasoline is not fungible among other western states, supply volatility is increased.

### **Pricing Practices**

We have fully cooperated with an ongoing FTC investigation of West Coast gasoline prices and expect the results soon. We believe the evidence will show that BP is one of the most competitive marketers in the region and show no findings of wrongdoing, similar to findings from past investigations.

We also understand that the FTC investigation has become primarily focused on the practice of 'redlining.' Our distributor supply contracts do not contain territorial restrictions, sometimes called 'redlining.' On the West Coast, we have very few distributor supply agreements and this practice does not apply to us. Our decision to use direct marketing facilities is based on the efficiencies of the supply chain for effective cost management.

Concerning dealer pricing practices, we use price zones to meet competition and comply with the law. The Robinson-Patman Act prohibits a supplier from discriminating in price among its customers who are in direct competition. We use price zones to ensure that all branded facilities in a price zone receive the same wholesale price. Price zones are defined through analysis of traffic patterns and physical boundaries such as rivers, freeways and industrial parks, etc. There is no station count criterion for establishing a price zone. As a result, while the wholesale price is the same for every site within a price zone, each station operator independently sets its retail or street price.

### **ANS Exports**

A coalition of Alaska and California oil producers, Maritime Labor, shippers and contractors banded together to repeal the ANS export ban in 1995. The idea originated in Vice President Gore's Report, Reinventing Government that was acted upon through a study by then Secretary of Energy Hazel O'Leary. Legislation was introduced in the House of Representatives where it passed by a vote of 361 to 54, and in the Senate where it passed a vote of 69 to 29. President Clinton signed the bill into law on November 28, 1995.

Regarding the suggestion that BP's ANS exports have increased West Coast gasoline prices, several things can and should be said on this topic:

1. BP's ANS exports have not affected West Coast crude oil prices. Crude oil is a global commodity, and ANS is traded in that global market. The trading activity of no single person or company can affect crude oil prices. On the West Coast as elsewhere, exports are balanced by imports, and the global forces of supply and demand establish prices.
2. ANS exports have had no effect on West Coast gasoline prices. According to the General Accounting Office's statistical and economic analyses in this connection, "the prices of gasoline, diesel, and jet fuel on the West Coast did not significantly change as a result of lifting the [ANS] export ban." The same study found that, "West Coast consumers appear to have been unaffected by lifting the [ANS export] ban, because the prices of important petroleum products they use have not increased." General Accounting Office, "Alaskan North Slope Oil: Limited Effects of Lifting Export Ban on Oil and Shipping Industries and Consumers," GAO/RCED-99-191, (July 1999) at 30,31. Economist Carl Shapiro's own study of the relationship between ANS prices (moving alone) and West Coast gasoline prices came to the same conclusion – increases in the price of ANS crude relative to other crude oils does not affect the price of gasoline.
3. ANS exports have no relevance to current discussions of West Coast gasoline prices. Today, BP is a West Coast refiner and currently refines more Alaska North Slope crude oil than it produces. We have not exported ANS crude since June 2000. To our knowledge, no other company has exported Alaska North Slope crude since that time, either. BP has no plans to export ANS crude at this time.

## **Crude Trading**

We also would like to take this opportunity to address the suggestion made in the press recently that documents produced to the FTC in connection with BP's acquisition of ARCO somehow reflect illegal or improper conduct. The suggestion is simply not true. Some of BP's trading documents may have been unfortunately worded, and the press has highlighted that fact, but the documents do not change the global nature of these West Coast crude markets. Considered in the context of these market realities, BP's trading documents reflect nothing more than efforts to engage in normal trading activities, which are not only proper, but, in the larger view, essential to the efficient operation of global markets.

In this connection, the FTC, in approving the BP/ARCO merger, specifically noted that BP's trading activity was legal: "It is important to emphasize that BP's unilateral actions were not illegal under the antitrust laws – and, indeed, the complaint makes no allegations that exports were illegal." Further, as most relevant to the focus of the hearing, BP's ANS exports have not been a factor in West Coast gasoline prices as established by the General Accounting Office and Shapiro analyses referenced earlier.

## **Confidential Documents**

We strongly disagree with those who suggest that confidential documents held in agreement with the Federal Trade Commission be released. These documents must remain confidential.

1. Confidential documents are standard procedure for all merger applications.
2. This request affects a number of companies other than BP, who are not here today and some of these companies currently have matters pending before the Commission.
3. This matter has been the subject of a rigorous federal court review, and a federal judge, the FTC and the Attorneys General of Oregon, California, Washington and Alaska have participated in and endorsed this process and its outcome.

The essential information concerning BP's pre-merger ANS exports and trading activity is summarized in the public record. The FTC's interpretation of those documents and activities was included in public filings as part of the FTC's BP/ARCO merger lawsuit last year, and many of the documents themselves were made public as the result of proceedings to unseal the record. The only portions of the BP documents that have not been made public have been determined by federal court proceedings to contain confidential and legitimately protected trade secret information. BP and third parties alike provide large volumes of sensitive documents to the FTC in reliance upon the continued confidentiality of their trade secrets. These expectations of continued confidentiality need to be honored for the proper and efficient conduct of this system of regulatory review. We have confidence that these rigorous federal proceedings have struck a proper balance concerning what information should be made public, and what information is properly kept confidential.

## **Recommendations**

Returning to the specific issue for this hearing, West Coast gasoline prices are higher than the national average. We have listed some of the reasons for this fact. While some of these factors can be managed through public policy, we need a national energy policy. We recommend the following:

1. Gasoline must be made more fungible to reduce supply volatility and increase flexibility. Oxygenates are not required in gasoline to meet air emission standards. The required use of oxygenates in gasoline complicates the industry's ability to move gasoline to areas in short supply.
2. We need infrastructure to ensure that growing energy demand can be managed. The current pipeline network must be expanded to ensure that natural gas, crude oil, gasoline and other fuels are efficiently delivered to customers.

3. The trade-off between energy and environmental policy must be managed so that we continue to meet our commitment to a clean environment, while allowing for the building of new units required to manufacture the new cleaner fuels, which BP supports.
4. The Unocal fuels patent unnecessarily complicates the manufacturing process and increases costs. The patent formulation adds little value and should be reviewed by the United States Patent office.

I thank you for the opportunity to testify.